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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,885	01/16/2004	Billy W. Carmen		7002

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LEE W. TOWER
19 SADDLE ROAD
RANCHO PALOS VERDES, CA 90275

EXAMINER

HAQ, NAEEM U

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 09/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/758,885

Applicant(s)

CARMEN, BILLY W.

Examiner

Naeem Haq

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 12 and 13 is/are rejected.
- 7) ☒ Claim(s) 9-11 and 14-17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Allowable Subject Matter

Claims 9-11 and 14-17 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and all intervening claims.

Claim Objections

Claim 1 is objected to because of the following informalities: This claim recites the limitation "...the referred product identification..." (line 24) and the limitation "...the referred retailer identification..." (line 25). There is insufficient antecedent basis for these limitations in the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Referring to claim 1: This claim recites the conditional limitation "including the referred product identification and the referred retailer identification in the entry for the referring consumer in the consumer database, if retailer does not stock the referred

product or a set number of consumers in the consumer database other than the referring consumer have not already referred the referred product to the referred retailer” It is unclear to the examiner what the scope of the claim is when the conditional statement is false. For this reason, claim 1 is rendered indefinite.

Referring to claim 2: This claim recites a series of conditional statements. It is unclear to the examiner what the scope of the claim is when the conditional statement is false. For this reason, claim 2 is rendered indefinite. This claim also recites the limitation “...the identified retailer...” in line 8. There is insufficient antecedent basis for these limitations in the claim. It is unclear to the examiner whether the “the identified retailer” is the same as or different from the “referred retailer”. The examiner will provide art rejection for this claim after further clarification by the Applicant.

Referring to claim 6: This claim recites the limitation “...the referring consumer reward...” in line 5. It is unclear to the examiner what “reward” the Applicant is referring to because there is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-8, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rossides (US 2004/0215542 A1) in view of Walker et al. (US 2004/0243478 A1) ("Walker").

Referring to claim 1: Rossides teaches a method of consumer to business referral managed by a service provider on behalf of consumers and manufacturers participating over a public network and accessing the service provider over the public network ([0071] and [0388]), the method comprising the following steps: maintaining a manufacturer database including a plurality of manufacturer entries, each entry for a manufacturer in the manufacturer database including the manufacturer's identification, and for each retailer stocking any of the manufacturer's products, the retailer's identification and identification of the manufacturer's products stocked by the retailer ([0099], [0100], and [0119]); maintaining a consumer database including a plurality of consumer entries, each entry for a consumer in the consumer database including the consumer's identification ([0132]-[0148]); receiving from the referring consumer over the public network a product referral, the product referral including the referred product identification and the referred retailer identification (Abstract, lines 3-5; [0197]-[0203]); searching the consumer database to determine whether a set number of consumers in the consumer database other than the referring consumer have already referred the referred product to the referred retailer and including the referred product identification and the referred retailer identification in the entry for the referring consumer in the consumer database, if retailer does not stock the referred product or a set number of consumers in the consumer database other than the referring consumer have not

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already referred the referred product to the referred retailer ([0283], [0284], [0305], and [0306]); displaying products in the manufacturer database on the public network and a consumer viewing the displayed products on the public network and selecting a product to refer to a retailer ([0086]-[0088], [0091], and [0098]-[0100]); and informing the manufacturer of the referral of the product ([0128]). Rossides does not teach searching the manufacturer database to determine whether the referred retailer already stocks the referred product. However, Walker teaches a purchasing and redemption system and method that searches a database to identify a retailer who currently has stock of a requested product ([0431]). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Walker into the invention of Rossides. One of ordinary skill in the art would have been motivated to do so in order to identify a retailer who currently had stock of the requested product, as taught by Walker.

Referring to claims 3 and 4: The cited prior art teaches or suggests all the limitations of claim 1 as noted above. The cited art does not teach that the set number of consumers in the consumer database other than the referring consumer is one, or that the number of consumers in the consumer database other than the referring consumer is a set number greater than one. However, the Examiner notes that these limitations are not functionally involved in the steps of the recited method. Therefore these limitations are deemed to be nonfunctional descriptive material. The steps of the method would be performed the same regardless of the number of consumers in the consumer database. The differences between the Applicant's invention and the prior art

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are merely subjective. Thus this nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) also see MPEP 2106. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to place any number of consumers in the database of the cited prior art because such information does not functionally relate to the steps of the recited method and because the subjective interpretation of information does not patentably distinguish the claimed invention.

Referring to claim 5: The cited prior art teaches or suggests all the limitations of claim 1 as noted above. Furthermore, Rossides teaches manufacturer registering on the service provider via the public network by providing manufacturer data including manufacturer's name, address and contact information ([0089]); creating a manufacturer entry in the manufacturer database for the manufacturer, the entry including the manufacturer data; manufacturer uploading for each product manufactured by manufacturer, product information including a unique product number, a product description, pricing, and a referral policy; including the product information in the manufacturer entry in the manufacturer database; manufacturer uploading for each product, retailer information for retailers that stock the product including each retailer's name, address, and contact information; and including the retailer information for each product in the manufacturer entry in the manufacturer database ([0098]-[0113]).

Referring to claim 6: The cited prior art teaches or suggests all the limitations of claim 1 as noted above. Furthermore, Rossides teaches the set number of consumers in the consumer database other than the referring consumer for each product is determined by the referral policy for the product; and the referring consumer reward is determined by the referral policy for the product ([0101] and [0102]).

Referring to claim 7: The cited prior art teaches or suggests all the limitations of claim 1 as noted above. Furthermore, Rossides teaches the step of consumer registering on the service provider via the public network by providing consumer identification including consumer's name, address and contact information; and creating a consumer entry in the consumer database including the consumer identification ([0132]-[0159]).

Referring to claims 8 and 12: The cited prior art teaches or suggests all the limitations of claim 1 as noted above. The cited prior art does not teach maintaining a retailer database including a plurality of retailer entries, each retailer entry containing data including the retailer name, address, contact information, products stocked by the retailer, and products referred to the retailer. However, the Examiner notes that these limitations are not functionally involved in the steps of the recited method. Therefore these limitations are deemed to be nonfunctional descriptive material. The steps of the method would be performed the same regardless of the data in the database. The differences between the Applicant's invention and the prior art are merely subjective. Thus this nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217

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USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) also see MPEP 2106. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to place any data in the database of the cited prior art because such information does not functionally relate to the steps of the recited method and because the subjective interpretation of information does not patentably distinguish the claimed invention.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rossides (US 2004/0215542 A1) in view of Walker et al. (US 2004/0243478 A1) ("Walker") and further in view Lucas (US 2004/0230503 A1)

Referring to claim 13: The cited prior art teaches or suggests all the limitations of claim 12 as noted above. The cited prior art does not teach a manufacturer searching the manufacturer representative database to find manufacturer representatives that represent products similar to the manufacturer's products in the manufacturer database. However, Lucas an inventory control system that can query (i.e. search) an inventory of distributor (i.e. manufacturer representative) (claim 76). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Lucas into the invention of the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to determine the ability of a distributor to fulfill an order, as taught by Lucas.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naeem Haq whose telephone number is (571)-272-6758. The examiner can normally be reached on M-F 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on (571)-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Naeem Haq, Primary Examiner
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September 26, 2006